



SAN BRUNO CITY COUNCIL

ADJOURNED & REGULAR MEETING

MINUTES

October 12, 2004

ADJOURNED City Council meeting was called to order at 6:30 p.m., at the San Bruno Senior Center, located at 1555 Crystal Springs Road. Presiding was Vice Mayor O'Connell and in attendance was Councilmembers Pallas, Ibarra, and Ruane. Absent with notice was Mayor Franzella. City Clerk Simon was recording.

The following applicants were interviewed in order to fill vacancies on committees, boards, and commissions:

Greg MacPherson, Mary Johnson, Leslie Cullinane, Rick Biasotti, Walter Carrasco, William Cochrane, Steven Johnson, James Craib, Emile Hons, Frank Hedley, and Donna Rodriguez.

Vice Mayor O'Connell notified those in attendance that the appointments would be made at the next regular Council Meeting on October 26, 2004, and the City Clerk would notify applicants of the results. With no further citizens to interview the meeting adjourned to the **Regular City Council Meeting starting at 7:00 p.m.**

Vice Mayor O'Connell thanked the **San Bruno Garden Club** for providing the beautiful floral arrangement.

1. ROLL CALL: Presiding was Vice Mayor O'Connell, with Councilmembers Ruane, Ibarra, and Pallas in attendance. Mayor Franzella was absent with notice. City Clerk Simon was recording.

PLEDGE OF ALLEGIANCE: Led by Beautification Task Force member and long time San Bruno resident Edith McClurg.

ANNOUNCEMENTS:

- a. San Bruno Chamber of Commerce will host an **"Autumn Fest"** on Saturday October 23, 2004, at the Recreation Center in City Park 10:00 a.m. to 4:00 p.m. This year's event includes a Scarecrow decorating and Pie-Eating contests.

Tammy Del Bene gave the highlights of the event and invited the public to attend. There will also be a coloring contest and entry forms will be available at the Library, City Clerks Office, and the Chamber Office.

- b. The last day to **register or re-register** to vote is October 18, 2004, in order to make your choice in the General Election on November 2, 2004.

City Clerk Simon cautioned the public that the registration forms must be received in the Elections Office at 40 Tower Road San Mateo by the 18th and not to delay mailing them in.

Tammy Del Bene notified the public of the **"Coats For Kids Program"**, co-sponsored by the City and San Bruno Garbage Company. Coats are being gathered now and distribution will be on November 19, 2004 at the Volunteer Firemen's Hall 618 San Mateo Avenue. Call 650-616-7145 for more information.

PRESENTATIONS:

a. Vice Mayor O’Connell presented the Eighth Annual Beautification Awards.

Tom Williams Community Development Director presented a power point of downtown businesses, which have utilized the “Façade Improvement Program” and detailed the efforts the City of San Bruno is making to upgrade and beautify the buildings on San Mateo Avenue.

Special Recognition was given to James Metcalf III, Director of the Golden Gate National Cemetery for all the improvements he has completed during the last year. Director Metcalf said efforts are being made to improve the corner of Sneath Lane and El Camino Real. He wants to make the Cemetery a “National Shrine” and memorial to all veterans and a place that the City of San Bruno will be proud of.

Vice Mayor O’Connell presented a “Special Recognition Plaque” and thanked Mr. Metcalf for all his efforts to beautify our City.

Councilmember Pallas said the Golden Gate national Cemetery does a great job with Memorial Day services and he encourages all residents to come out to this fine event and honor our veterans.

Awards for Xeriscape were given to Benito & Kate Dokoza, Michael Handy, Paul & Marilyn Noah, and Rhorda Pulliam.

Awards for Single Family Curb Appeal were given to Roberta & Anthony Washington, Elias & Guadalupe Picazo, Linda Jones, Thomas & Carol Jones, Jesse & Guadalupe Marquez, John & Judith Ramirez, Joan Fresquez, Nick Poppin, Dina Scopesi, Bonnie Hawkins, Seija Pukonen, Roque & Maria Martinez, Agustin & Ana Fernandez, and Brijit Lopez.

Awards for Improved Residential Property were given to Olivia Vizzi, Matt & Kathleen Butler, Cait Collins, Dave and Kris Gonzales, Greg & Bridget Collaco, and Brian and Debbie Shea.

Special Recognition to Commercial Improvements was given to Joe Welch 383 W. San Bruno Ave.

Special thanks were given to **Deputy City Clerk Vicky Hasha** for her assistance with the awards and for setting up the refreshments for the winners.

Councilmember Pallas announced the Annual Halloween Parade by the Project Pride Committee. This year the event will be held Friday October 29, 2004, at the Gymnasium in City Park. All San Bruno children 10 and under are invited to attend in costume and prizes will be given to all participants. Start time is 3:30 p.m. We hope to have Tanforan Mall finished so we can return there in 2005 for this great event.

Vice Mayor O’Connell recessed the meeting for a 10-minute break.

Meeting was reconvened at approximately 8:00 p.m.

b. Proclamation declaring October 2004, as “Domestic Violence Awareness Month” in the City of San Bruno was presented to Police Chief Violett.

Chief Violett accepted the proclamation and stated the San Bruno Police Department has scheduled special training for all officers to better respond to these types of incidents. On October 21, 2004, the San Mateo County Supervisors will be sponsoring the 5th Annual Walk to stop domestic violence.

c. Proclamation declaring October 23rd to 31st as “Red Ribbon Week” in the City of San Bruno was presented to Police Chief Violett.

Chief Violet accepted the proclamation and stated that in partnership with the San Bruno Park School District and to show our commitment to reduce the use of illegal drugs, all City employees will be given red ribbons to wear during the week of October 23-31, 2004.

2. REVIEW OF AGENDA: There were no changes made.

3. APPROVAL OF MINUTES: The regular City Council meeting minutes of September 28, 2004, were approved as submitted.

4. CONSENT CALENDAR: All items listed are considered routine or implement an earlier Council action and may be enacted by one motion; there will be no separate discussion unless requested by Councilmember, citizen or staff.

a. Approve: Payroll of September 24, 2004.

b. Approve: Accounts Payable of September 13, 2004. (Council Packets only, copy is available for review at the City Clerk's office)

M/S Pallas/Ibarra to approve the consent calendar and passed with unanimous vote, Franzella absent.

5. PUBLIC HEARINGS: (Notices have been published, posted, and mailed.)

Hold public hearing and introduce San Bruno Ordinance No. 1698 establishing an **Emergency Communication System Response fee** (911 access fee).

City Manager Jackson gave the staff report and reviewed the details of the proposed ordinance. A resolution establishing the fee amount will be presented at the next Council Meeting October 26, 2004, if the Council approves the first reading tonight. There would be a modest fee for each telephone line in San Bruno. This fee would recover some of the cost of the 911 Emergency System and the funds would be dedicated for this purpose only. Implementation would occur in two to three months following the effective date of the ordinance in order to provide an adequate amount of time for the telephone companies to include this fee on the billing statements to subscribers. Our draft ordinance is modeled after other jurisdictions that have implemented this fee. We have completed a careful review of the issues encountered in putting such an ordinance in place and in addition we have had an extensive dialog with SBC. We have incorporated suggested changes and concerns as appropriate. There are approximately 85 similar applications in process and the Cities of Union City and Stockton are dealing with legal challenges from Verizon Wireless and SBC. There is an allegation by SBC that the 911-access fee is actually a tax and subject to voter approval. The City's position is that this is a fee and revenues are collected and identified for the purpose of providing 911 access services. The City is currently collecting fees for such services such as access to the swimming pool and community center and building department fees. City Manager Jackson requested additional details of the proposed ordinance be given by Finance Director O'Leary.

Director O'Leary reconfirmed that this is a fee, and it has been a long-standing policy of the City Council that special services have user fees to support the programs. The fee is for the dispatch center cost and response to 911 calls and does not include emergency response by public safety officers. The ordinance requires telephone providers of landlines and wireless to collect such a fee and the ability for them to be reimbursed for their cost. There are exemptions to the fee for lifeline customers, schools, telephone companies, pay phones, and non-profit hospitals. To verify that these funds would be only use for this purpose a 911 Emergency Response fund would be established. The phone companies would have no obligation to collect delinquent fees. The cost for providing the 911 services is \$900,000 per year and it is anticipated that the cost recovered this year will be about \$300,000 since implementation would not happen until February of 2005.

Councilmember Ibarra said the staff report indicates the new fee will be between \$1.50 and \$2.00 per line per month. His telephone bill shows many fees being collected by SBC already and what will the new phone bill look like?

Director O’Leary said the ordinance allows the provider to collect a fee of 1/8 of 1% but it will not be on the bill and the City will pay this ongoing cost to collect the 911-fee and not the customers. The telephone company will deduct the fee from the funds transmitted to the City.

Councilmember Ibarra said he is in favor of this ordinance but what risk is involved as far as a legal challenge?

City Attorney Thompson said the ordinance has taken into account the concerns of SBC and other providers and is in the best shape it can be. However, there is always the possibility that someone may challenge it. The Council can stop at anytime and the fees that are collected can be held in a special fund until resolution of the issue.

Councilmember Pallas said that this is very controversial and some feel this is a tax as opposed to a user fee and the courts will have to decide. We have been using 911 for many years and who has been paying for it? Director O’Leary said it has come from the General Fund Budget so the taxpayers have been paying. Councilmember Pallas asked why we need this fee anyway and what would happen if we did not go along with staff recommendations?

Vice Mayor O’Connell replied that during the budget cuts the Council agreed to pursue this source of revenue. In the past we did not have the current response time requirements, the needed 911 services for cell phones, the cost of new technology, and the budget reduction caused by the State of California taking away our funds. General Fund monies were used to pay for many things in the past but now we cannot afford to continue this practice.

Councilmember Pallas said he believes we were not careful with our budget and spent money on a new police station and remodeled City Hall when not needed. We should not penalize our people by continuing to “nickel and dime” them. He is not prepared to vote on this ordinance tonight.

Vice Mayor O’Connell opened the public hearing and asked if anyone wished to address the Council on this issue?

Carolyn Livengood of Sheryl Drive said it frightens her how high things are going up. Her house tax bill went up with new fees for Mosquito Abatement and all services are being increased a lot faster than her Social Security check. Will the people be asked to pay to breathe the air? It’s frightening.

Mike Panigiris of Huntington Avenue said each one of his phone bills already has a 911-fee and who is getting this money? The City may be involved in a lawsuit, which will cost us more money.

Rose Urbach of Euclid Avenue said when people want to use 911 they will worry about having to pay for it. Please leave it the way it is.

Nicole Heynneman, External Affairs Department, SBC, said this Emergency 911 Ordinance is a tax dressed up as a fee. We view it as a tax levied against our customers and your constituents. Providing emergency service is a function of local government and should be funded that way and not by placing a tax like fee on phone users. Under State Law, 911 is an Emergency Communication System not an Emergency Response System. There is already a state fund available to local governments to access for cost for their emergency communication system equipment. San Bruno is circumventing the ballot box. Prop 218 requires local voter approval before taxes are increased. SBC has thousands of 911 ordinances

in the 13 states it services and now over 80 “cropping” up in California. SBC must manually implement each of these taxes into its billing system with time, energy, and incredible cost to the phone business. To gain clarity, SBC has joined with other carriers to bring action against Cities to determine if these are taxes and not fees. Many Cities have placed this issue on hold until the outcome of the current lawsuit. SBC commends the San Bruno staff for listening to our concerns and including us in the early stages of this ordinance; however, we remain opposed to a phone tax disguised as a fee and urge a no vote or delay of action.

Councilmember Ruane said it was mentioned that it cost SBC and other carriers a lot of money to implement the 911 Ordinances; however, reimbursement is built into this ordinance. SBC representative Heyneman replied that SBC’s computer system is “archaic” and must deal with each ordinance differently because there are no standards. Not aware if the 1/8 of 1% would actually cover the cost.

Councilmember Ruane asked if it was SBC’s intent to charge a fee to the City of San Bruno to do the collection of the 911-fee? The reply was yes, and Councilmember Ruane said, “That in fact is what the City is trying to do” with recovering our cost for the 911-access service.

Jim Kelly of Oak Avenue said it is inappropriate and inaccurate to describe this cost as a user fee. There are many surcharges already on his phone bill. If you wish to call it something it is a surcharge since many will not use 911 services.

No one else wished to address the Council on this issue.

M/S Ruane/Pallas to close the public hearing passes with unanimous vote and Franzella absent.

Police Chief Violet addressed the question on the surcharge the State of California is already charging phone users. He said it has been in place for 20 years and the funds cannot be used for operating cost, salary, or benefits. Currently San Bruno qualifies for a 5-year upgrade to backroom hardware in the range of \$145,000.

City Manager Jackson replied to the question of the difference between a tax and a fee? She said in this case this is an access fee for the privilege and benefit of having access to the 911 systems. The difference between a fee and tax is that a fee can only be imposed where there is a specific identified benefit to the fee payer. A tax may be imposed irrespective of benefit and in California; a tax must be voted upon. She clarified for the previous speaker that individual fee payers would not be charged per call to 911 and no one would be discouraged from using. The State imposed 911 system fee is distributed to local jurisdiction for equipment and the fee being proposed by this new ordinance does not duplicate service. Those amounts covered by the State of California are excluded from the \$800,000 per year cost to operate the 911-service.

Councilmember Ruane said we must implement programs to cover our cost. He was criticized years ago for recommending people be charge for water on the amount actually used and still feels it would be the right thing to do. We must start charging for things we would have given away in the past.

Councilmember Pallas said we are punishing people for our prior budget mistakes and he will not support this ordinance.

Councilmember Ibarra said Mr. Pallas is complaining about mistakes of the past but has not come up with other alternatives to balance the budget. This ordinance is creative in comparison to parcel taxes levied in other Cities. This service is free now but we must recover our cost. The citizens will let us know if they are not happy with this new fee. He is willing to go forward but very concerned about pending litigation.

M/S Ruane/Ibarra to waive the first reading and passed by unanimous vote with Franzella absent.

Vice Mayor O’Connell asked the City Attorney if there is a lawsuit, could the Council make a decision to cancel this ordinance? City Attorney Thompson said the Council maintains control and can always cancel its prior action.

Councilmember Ruane introduced Ordinance 1698 for adoption with roll call vote of ayes, Ruane, O’Connell, and Ibarra, No’s Pallas, Absent, Franzella.

6. UNFINISHED BUSINESS: None

With Concurrence from the Council, Vice Mayor O’Connell moved up item 12.a. as not to keep the Culture and Arts Commissioners too late.

Chair Emile Hons gave an overview of the first year’s activities. New mission statement and bylaws were adopted and will be presented to the Council. He introduced all members of the commission. He thanked Library Services Director Terry Jackson and staff member Jean Louie for the exceptional guidance and help to the commission.

Councilmember Ibarra asked if he could hear the mission statement of the commission. Member Hons said it was “ Preserving our community heritage, encourage artistic endeavor, and sharing our diverse culture”. Vice Mayor O’Connell thanked the Commission for their report to the Council.

7. CALL FOR, PRESENTATION OF BIDS, and AWARD OF CONTRACTS:

Public Works Director Munns recommends the following:

Adopt Resolutions Authorizing the City Manager to Execute Four Agreements for Professional Services for the **El Camino Real / Sneath Lane to I-380 Project**, consisting of:

- (1) Consultant Agreement with Vali Cooper & Associates, Inc. to Provide Construction Management and Inspection Services, for the Not-to-Exceed Amount of \$340,000;
- (2) Amendment No. 1 to the Consultant Agreement with the County of San Mateo to Provide Right-of-Way Acquisition Services, for the Not-to-Exceed Amount of \$42,000;
- (3) Amendment No. 3 to the Consultant Agreement with DKS and Associates to Provide Engineering Design Services, for the Not-to-Exceed Amount of \$775,122; and
- (4) Amendment No. 1 to the Consultant Agreement with Gray-Bowen and Company, Inc. to Provide Project Management Services, for the Not-to-Exceed Amount of \$252,000.

Public Works Director Munns stated it would take separate actions on all four resolutions. This project started in 1999 with just El Camino Real/Sneath Lane improvements and has expanded to encompass improvements due to BART, “The Crossing”, and “The Shops at Tanforan” projects. Now we are widening El Camino Real, placing a brand new intersection mid way between Sneath Lane and I-380 on El Camino Real and finally an additional lane will be added to the North Bound El Camino Real off ramp on I-380. This is one of most complex projects undertaken in our City and the extra cost is required to manage the scope of the contact work.

Councilmember Ruane said prior approval was given in the year 2000 but the Council has not been informed about the increased cost over the last three years. While the project is in budget, the Council was not kept informed and things could have gotten out of control.

Councilmember Pallas asked who would be paying for the increased cost of the project. Director Munns said the mitigation fees charged to the Crossing, The Shops at Tanforan, and BART would pay the cost increases. The original contract was expanded with Council participation during the hearings for the development agreements and the increases were not unplanned.

Councilmember Pallas asked what would happen if BART refused to pay their share of the cost for this project? Director Munns said the agreement calls for reimbursement and the City would have to pursue legal remedies if anyone refused to pay their share. We do not have bonds in place to guarantee payment.

Councilmember Ruane introduced resolution-approving agreement with Vali Cooper & Associates with roll call vote of all ayes with Franzella absent.

Councilmember Ruane introduced resolution-approving agreement with County of San Mateo with roll call vote of all ayes with Franzella absent.

Councilmember Ruane introduced resolution-approving agreement with DKS and Associates with roll call vote of all ayes with Franzella absent.

Councilmember Ruane introduced resolution-approving agreement with Gray-Bowen with roll call vote of all ayes with Franzella absent.

8. COMMUNICATIONS: None

9. STAFF REPORTS:

- a. CATV Director Gyaltsen recommends the City Council adopt a resolution approving an increase of \$2.87 to the **Basic Cable TV** rate. The new cost would be to \$39.52 per month effective December 1, 2004.

Director Gyaltsen gave the City Council the staff report highlighting the annual request for a rate review. He is proposing an increase of \$2.87 to the basic cable rate. An overview of CATV operations was given and Al Johnson, CATV System Engineer, reviewed several new services, (VOD Video on Demand, VOIP Voice over Internet Protocol, and Wi-Fi, Wireless Internet) which could be offered in the near future. Channel lineup changes in addition to a policy change to allow low-income discount customers to purchase other services such as pay-for-view is being requested. The limited service rate would be reduced by \$2.00 since two channels will be removed from this tier level.

Director Gyaltsen clarified that the resolution will include the entire rate package including changes to limited cable service, eliminating the Analog package, increasing the additional outlet charge, changes to channel lineup, and the low income discount policy.

Councilmember Pallas said there are only two cities in the USA that have municipal cable and we are non-profit and should cost much less than private companies. We should not compare our rates to private companies and our costs are getting too high to properly compete. He is concerned that we will be losing even more customers to competitors. Director Gyaltsen replied that we provide similar service to Comcast and dish operators. There is no profit margin being collected but we contribute to the City's General Fund.

Councilmember Ibarra said many private companies use "teaser rates" to get people to switch and then raise the rates higher than San Bruno Cable. We have always sold great service and since the Council is the Board of Directors subscribers can reach the actual decision makers.

Jim Kelly of Oak Avenue said he has heard talk of losing customers to dish operators but no discussion or strategy to gain customers. If CABLE expands to phone services will this eliminate surcharge for 911 access? Can money be saved by not renewing channels, which have low viewer demand and high fees?

Vice Mayor O’Connell said she is a member of the Council Ad Hoc Committee for CATV policy and staff is working on marketing strategy but we have a limited customer base and are restricted to the our City limits. Many channels are must carry status and we continue to view others for possible change.

Rose Urbach Euclid Avenue said cable in San Bruno is a service to the people and not a business.

Councilmember Ibarra introduced the resolution for adoption with roll call vote of Ayes, Pallas, O’Connell, Ibarra, and Ruane, and Absent Franzella.

- b. Finance Director O’Leary recommended the City Council adopt a resolution amending the two-year **Enterprise Funds Budget** (Water, Stormwater, Wastewater, and Cable TV Funds) 2004-05.

Director O’Leary gave the staff report including the changes the Council has adopted since the budget was approved plus the changes to the CATV funds just adopted tonight.

Councilmember Pallas asked why the utility billing shows a cost of \$800,000 for the water division but no cost for wastewater?

Director O’Leary explained that Council policy has been to charge the water division for the billing cost because they have the meters being read to determine the amount of billing. Wastewater is secondary and need not be on the bill and could be assessed on the property tax roles. The total expense for the billing operation is allocated to water and the Council can change policy if desires. **Councilmember Pallas** said if the Water Department was separate like Cable TV we could save money.

Vice Mayor O’Connell said there might be a perception of cost savings but the cost would just be shifted to a new department and no decrease in cost would result and maybe an increase with additional personnel to run a separate department.

Director O’Leary explained that the Public Works Department has included a \$7500 allocation for a “low flow” water use program for rebates on replacement of existing toilets with new low-flow units.

Councilmember Ruane introduced the resolution with the addition of the \$7500 for the “Low Flow” toilet program. A roll call vote was taken of all ayes and Franzella absent.

10. REPORT OF CITY ATTORNEY - RESOLUTIONS & ORDINANCES: None

11. PUBLIC COMMENT ON ITEMS NOT ON AGENDA: No one wished to address the City Council at this time.

12. REPORT OF COMMISSIONS, BOARDS, & COMMITTEES:

a. The Culture and Arts Commission will provide its first **annual report** to City Council. This item had been moved up to an earlier item on the agenda.

- b. Project Pride Committee (Franzella/Pallas) announces date, time, place and details for the **Annual Halloween Parade**.

Councilmember Pallas had given the details under “Announcement” earlier on the agenda.

13. NEW BUSINESS:

Councilmember Pallas requested the staff be directed to do a study in order to determine the cost of moving the City Council Chambers back to City Hall. There is no place to receive visitors to City Hall and we are currently not able to broadcast all meetings of committees, boards, and commissions.

City Manager Jackson said there would be some cost in performing this study and it is up to the full Council to decide if a study should be done.

Councilmember Ibarra said he does not believe it is necessary to restore the Council Chambers and we would have to eliminate improvements already made and not sure where we would place.

Councilmember Pallas said the Council had planned on using the Library Building to establish a new Council Chambers but is does not seem likely that a new Library would be built anytime soon and we should make other plans now and will need to know the cost to proceed.

Vice Mayor O'Connell said that is correct, our plan was when we built a new Library we would use the vacated Library building. There are difficulties with taking down walls, moving staff, and doing work at this time.

Councilmember Pallas made a motion to direct staff to prepare a study to determine the cost of putting the Council Chambers back at City Hall but there was no second to the motion.

Closed Session regarding:

- a. City of San Bruno Vs. Bay Area Rapid Transit District (BART) SMC Superior Court Case No. CIV-441832.** (Gov't Code Section 54956.9.a, pending litigation)
- b. Labor negotiations** with the San Bruno Professional Fire Fighters Association. (Gov't Code Section 54957.8)

At 10:35 p.m. meeting was adjourned to closed session.

At 10:45 p.m. meeting was reconvened and **Vice Mayor O'Connell** reported that on item 13.a, direction was given to legal counsel on how to proceed. Item 13.b was deferred to the October 26, 2004, regular City Council meeting.

14. ADJOURNMENT:

With no further business to transact, at 10:45 p.m. the meeting adjourned to the next Regular Meeting of the City Council on October 26, 2004, at 7:00 pm, at the Senior Center, at 1555 Crystal Springs Road.

Respectfully submitted for approval
at the regular City Council meeting
of October 26, 2004.

Ed Simon, City Clerk

Larry Franzella, Mayor